IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Bail Appl..No. 4593 of 2007()

(CRIME NO. 121/2007 of BADIADKA POLICE STATION)

PETITIONER/ACCUSED

ASSAINAR, S/O IBRAHIM,
KATTUKUKKE(VILLAGE),
SURUDULU, PERLA P.O.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI. JAI GEORGE, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4593 of 2007

Dated this the 30th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 326 and Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The crux of the allegations is that the petitioner had allegedly attacked the victim and caused grievous hurt to her. There is a further allegation that she was insulted with reference to the caste (Scheduled Caste) to which the victim belongs. The crime was registered on 10.07.07. Investigation is in progress. The petitioner apprehends imminent arrest.

2. Crime has been registered, inter alia, under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act and in these circumstances, Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act is a clear bar against the entertainment of the claim of anticipatory bail. The learned counsel for the petitioner submits that the allegations would not constitute an offence under the said Act and in these circumstances the mere fact that the police officer has chosen to raise

that allegation also, does not at all oust the jurisdiction of this Court to grant anticipatory bail under Section 438 Cr.P.C. The counsel, in these circumstances, prays that anticipatory bail may be granted to the petitioner.

3. The application is opposed by the learned Public Prosecutor. He contends that Section 18 of the said Act bars the relief. He further submits that even assuming that Section 18 of the Act is not there, the victim had suffered serious injuries there is no reason at all to invoke the powers under Section 438 Cr.P.C.

4. I find merit in the opposition by the learned Public Prosecutor . A meticulous evaluation of the ingredients of the offence under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act is certainly not necessary. On the face of it, I find the allegations to be validly raised under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The mere fact that the complainant has not in the F.I.R alleged that the alleged insult was in public view, is by itself no reason to exclude the application of Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Even otherwise I find that the victim has suffered a grievous injury under Section 326 I.P.C and I find no reason to invoke the extraordinary equitable discretion under

Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary course. This Court has time and again made it clear that notwithstanding the fact that offence under Section 3 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act is triable by a court of session, that does not enable Magistrates to abdicate their jurisdiction under Section 437 Cr.P.C. The decisions in **Ali v. State of Kerala** [2000(2) KLT 280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42)] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250)] make the position clear.

5. In the result, this application for anticipatory bail is, dismissed. I may hasten to observe that if the petitioner appears before the learned Magistrate and applies for regular bail after giving sufficient prior notice to the prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and in the light of the 4 decisions referred above and expeditiously.

(R.BASANT, JUDGE)

rtr/-